

9017/PMK  
CICHANOWICZ, CALLAN, KEANE,  
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61 Broadway, Suite 3000  
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(212) 344-7042  
*Attorneys for Defendants*  
YANG MING MARINE TRANSPORT CORP.,  
YANGMING (UK) LTD. and ALL OCEANS  
TRANSPORTATION, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ENERGIZER S.A.,

Plaintiff,

- against -

M/V YM GREEN, her engines, boilers and  
tackle *in rem.*; YANG MING MARINE  
TRANSPORT CORP.; YANGMING (UK) LTD.;  
ALL OCEANS TRANSPORTATION INC.;  
KAWASAKI KISEN KAISHA LTD.; CONTERM  
HONG KONG LTD.; VANGUARD LOGISTICS  
SERVICES HONG KONG LTD.; FIEGE GOTH  
CO., LTD.; and SHENZHEN HIGH POWER  
TECHNOLOGY CO. LTD.

Defendants.

07 CV 7406 (LTS)

**YANG MING DEFENDANT'S  
ANSWER TO CLAIM  
FOR INDEMNITY AND  
CONTRIBUTION CONTAINED  
IN PLAINTIFF'S "REPLY  
TO COUNTERCLAIM SET  
FORTH IN SECOND  
AMENDED ANSWER"**

Defendants Yang Ming Marine Transport Corp. and Yangming (UK) Ltd. (both hereinafter "YML"), by its attorneys Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, answer the claim for indemnity and contribution contained in plaintiff's "Reply to Counterclaim set forth in Second Amended Answer" dated March 10, 2008 upon information and belief as follows:

12. Denies the allegations in paragraph 12.
13. Admits the allegations of paragraph 13.
14. Denies the allegations of paragraph 14.

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12. Denies the allegations in paragraph 12.
13. Admits the allegations of paragraph 13.
14. Denies the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Denies the allegations of paragraph 17.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The shipments in question were carried from Hong Kong to Basel, Switzerland via Hamburg, Germany pursuant to defendant K-Line bill of lading contracts and were, therefore, subject to the Hague Visby Rules.

YML claim the benefit of all exceptions, exemptions and limitations contained in the Hague Visby Rules and K-Line bill of lading to the full extent they may be applicable to them.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The shipments in question were carried pursuant to bills of lading issued by defendant K-Line and, upon information and belief, pursuant to bills of lading issued by underlying defendant Non Vessel Operating Common Carrier (NVOCC) bills of lading.

YML claim the benefit of all exceptions, exemptions and limitations contained in any bills of lading issued by any VOCC or NVOCC defendants pursuant to which this cargo was carried on the basis of the Himalaya Clauses contained in such bills of lading to the full extent such provisions may be applicable to them.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Any damage that was caused to plaintiff's cargo was the direct result of an act, fault or neglect of plaintiff, its agents, suppliers, contractors, affiliates or subsidiaries and

in regard to the manufacture, stowage, shifting, shipment, securing or packaging of the cargo in question.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

YML is not liable under the Hague or Hague Visby Rules for any loss or damage to plaintiff's cargo as alleged in the complaint since the alleged loss or damage occurred as a result of fire and such fire was not caused by the actual fault or privity of YML.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

The cargoes in question were shipped pursuant to a bill of lading contract issued by defendant K-Line which bill of lading provides that all actions and claims brought pursuant to such bill of lading shall be brought in the courts sitting in Tokyo, Japan.

All claims against YML should be dismissed in favor of jurisdiction in Japan.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The shipments in question moved from Hong Kong to Basel, Switzerland via Hamburg on a foreign flag vessel pursuant to bills of lading issued by a Japanese carrier and therefore the instant action has no connection whatsoever with the Southern District of New York and should be dismissed on the basis of forum non-conveniens.

Dated: New York, New York  
April 8, 2008

CICHANOWICZ, CALLAN, KEANE,  
VENGROW & TEXTOR, LLP  
61 Broadway, Suite 3000  
New York, New York 10006  
*Attorneys for Defendants*  
YANG MING MARINE TRANSPORT  
CORP., YANGMING (UK) LTD. and  
ALL OCEANS TRANSPORTATION, INC.

By: s/ Paul M. Keane  
Paul M. Keane (PMK-5934)

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(212) 785-5050

**CERTIFICATE OF SERVICE BY REGULAR U.S. MAIL AND BY ECF**

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.
2. On April 8, 2008, I served a complete copy of Defendant YML's Answer to Claim for Indemnity and Contribution Contained in Plaintiff's "Reply to Counterclaim Set Forth in Second Amended Answer", by regular U.S. mail and by ECF, to the following attorneys at their ECF registered address and mailing address:

To: HILL RIVKINS & HAYDEN, LLP  
45 Broadway, Suite 1500  
New York, New York 10006  
(212) 669-0600

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(212) 785-5050

  
Amanda Magri

DATED: April 8, 2008  
New York, New York